

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

SUSAN RAE SIDAK,

Petitioner,

vs.

DAVID WILLIAM SIDAK,

Respondent.

Case No. CI02-40

**DECREE OF DISSOLUTION
OF MARRIAGE**

DATE OF FINAL HEARING: December 10, 2002.

DATE OF RENDITION: December 11, 2002.

DATE OF ENTRY: See court clerk's file-stamp date.

This matter came on for final hearing. The petitioner appeared personally and was represented by Forrest F. Peetz, and the respondent appeared personally and was represented by David J. Feeney. A trial was had to the Court. The matter was taken under advisement.

NOW, effective upon the date of filing of this decree by the court clerk (the date of "entry" of decree), the Court, being fully advised in the premises, hereby finds, orders, adjudges and decrees as follows:

1. **JURISDICTION:** At filing, the petitioner resided in this county and now resides in this county. The petitioner resided in Nebraska for more than one year prior to filing. More than 60 days have passed since personal service was perfected or a voluntary appearance was entered. Neither party is now a party to any other pending action in any court for divorce, legal separation, or dissolution of marriage. Neither party is a member of the Armed Forces of the United States or any of its allies. The Court has jurisdiction of both parties and the subject matter of this action.

2. **MARRIAGE:** The petitioner and the respondent were married on June 22, 1996, in the City of O'Neill, Holt County, Nebraska.

3. **DISSOLUTION:** All reasonable efforts to reconcile have been made and there is no reasonable possibility of reconciliation. The marriage is irretrievably broken and should be, and hereby is, dissolved. This decree becomes final and operative after 30 days from date of entry, except for purposes of appeal and except that neither party may remarry (other than to each other) for six months from date of entry and the parties are deemed as married for health insurance purposes during such six month period. If either party dies prior to expiration of such time periods, the decree becomes final as of the date of entry.

4. **PRETRIAL ORDER:** The agreements, stipulations, and limitations of issues made at the pretrial conference and stated in the Pretrial Order are fair and reasonable in all respects, and are not unconscionable, and is hereby approved, and the following findings and orders are pursuant to the Pretrial Order as far as it goes. The Court determines the other issues upon the evidence presented.

5. **PAYMENTS:**

A. Credit shall NOT BE ALLOWED for any payments required to be paid to the Clerk of the District Court or to the State Disbursement Unit and which are not paid to the proper officer. All references to the court clerk or Clerk of the District Court shall mean the Clerk of the District Court of Holt County, Nebraska.

B. All payments of property settlement, attorneys fees, and/or costs ordered in this decree shall be paid to the Clerk of the District Court for disbursement to the person entitled to receive the same.

C. All payments of child support and/or medical support ordered in this decree shall be paid to the State Disbursement Unit for disbursement to the person entitled to receive the same.

6. **PREMARITAL PROPERTY:** Certain items were claimed as separate premarital by both parties that do not constitute separate premarital property for a variety of reasons, including use of joint funds while cohabiting for acquisition thereof or gifts made to the entire "family." However, the items on Appendix "D" denoted as

“premarital” represent true premarital assets, i.e., assets acquired before marriage by one party from that party’s sole funds, or items given by one party to the other party.

7. **PETITIONER’S PROPERTY:** The petitioner’s sole and separate property, subject to encumbrances unless otherwise provided herein, shall consist of:

A. All of the property now in the petitioner’s possession except as specifically awarded to the respondent herein.

B. The items on Appendix “D” attached hereto for which a value or label is stated under the column headed “Petitioner.”

C. The keepsakes, consisting of the wooden rocking chair, wooden cradle made by petitioner’s grandfather, and Winnie the Pooh play pen, which shall be marshaled by the respondent and delivered to the petitioner within 30 days after date of entry of decree.

8. **RESPONDENT’S PROPERTY:** The respondent’s sole and separate property, subject to encumbrances unless otherwise provided herein, shall consist of:

A. All of the property now in the respondent’s possession except as specifically awarded to the petitioner herein.

B. The items on Appendix “D” attached hereto for which a value or label is stated under the column headed “Respondent.”

C. The shot glass collection, which shall be marshaled by the petitioner and delivered to the respondent within 30 days after date of entry of decree.

9. **DEBTS:** The indebtedness of the parties shall be paid as follows:

A. Each party shall pay the debts incurred by that party personally since the separation on March 20, 2002.

B. The petitioner shall pay the following: The items of debt on Appendix “D” attached hereto for which a value or label is stated under the column headed “Petitioner.”

C. The respondent shall pay the following: The items of debt on Appendix “D” attached hereto for which a value or label is stated under the column headed “Respondent.”

D. Each party shall indemnify and hold the other party harmless of all liabilities such party is required to pay and of all debts encumbering property such party receives.

E. The respondent has stated an intention to file a bankruptcy petition in federal court. The characterization of indemnities as “in the nature of support” is a matter of federal bankruptcy law for determination by the federal court. However, to the extent that the federal court may consider the intention of this court in settling the issues now before this court, it is this court’s intent that the indemnification provided for each party by the other party in paragraph D above should be “in the nature of support.”

10. PROPERTY SETTLEMENT:

A. The respondent shall pay to the court clerk for disbursement to the petitioner as property settlement the total sum of \$5,740.00.

B. The judgment shall bear interest at the judgment rate (see “JUDGMENT” paragraph below) from the date of entry until paid.

C. The calculations used to determine the amount of the property settlement judgment are set forth on the attached Appendix “D” incorporated herein.

11. ALIMONY: Neither party shall pay any alimony to the other party.

12. COSTS AND ATTORNEYS’ FEES: In addition to any taxable costs paid by the respondent, the respondent shall pay \$129.83 of the taxable costs incurred by the petitioner, to be paid on or before March 1, 2003. The respondent shall pay attorney fees for the benefit of petitioner’s attorney of \$3,310.00, in addition to any temporary allowance for such fees, taxed as additional costs, to be paid in installments of \$75.00 per month commencing on April 1, 2003, and a like amount on the first day of each consecutive month thereafter until paid. These amounts shall bear interest at the judgment rate (see “JUDGMENT” paragraph below) from date of entry of judgment until paid.

13. CUSTODY FINDINGS:

A. Section 42-364(1) specifies that “[c]ustody and time spent with each parent shall be determined on the basis of the best interests of the minor child with the

objective of maintaining the ongoing involvement of both parents in the minor child's life." NEB. REV. STAT. § 42-364(1) (Reissue 1998). Subsection 2 specifies the following factors to be considered: (a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing; (b) The desires and wishes of the minor child if of an age of comprehension regardless of chronological age, when such desires and wishes are based on sound reasoning; (c) The general health, welfare, and social behavior of the minor child; and (d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903. NEB. REV. STAT. § 42-364(2) (Reissue 1998). Subsection 3 directs that the court "shall not give preference to either parent based on the sex of the parent and no presumption shall exist that either parent is more fit or suitable than the other." NEB. REV. STAT. § 42-364(3) (Reissue 1998).

B. In addition to the statutory factors, the Nebraska Supreme Court has identified additional factors to be considered, including:

the moral fitness of the parents, including their sexual conduct; the respective environments each offers; the emotional relationship between the child and the parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; and the capacity of each parent to provide physical care and to satisfy the needs of the child.

McDougall v. McDougall, 236 Neb. 873, 877, 464 N.W.2d 189 (1991).

C. In addition, the Nebraska Supreme Court has also considered:

(1) The definiteness of a proposed child care plan. *Christensen v. Christensen*, 191 Neb. 355, 215 N.W.2d 111 (1974).

(2) Which parent is the primary caretaker. *Applegate v. Applegate*, 236 Neb. 418, 461 N.W.2d 419 (1990).

(3) The amount of time spent with baby-sitters. *Ritter v. Ritter*, 234 Neb. 203, 450 N.W.2d 204 (1990).

(4) Which parent can devote the most time to the child. *Ritter v. Ritter, supra*.

(5) Which parent shows the most concern for the child's education. *Trimble v. Trimble*, 218 Neb. 188, 352 N.W.2d 599 (1984).

(6) The closeness of the relationship between the parent and child. *Brooke v. Brooke*, 234 Neb. 968, 453 N.W.2d 438 (1990).

(7) The emotional impact on the child. *Sikes v. Sikes*, 205 Neb. 441, 288 N.W.2d 43 (1980).

(8) Frustration of the non-custodial parent's visitation. *Clark v. Clark*, 228 Neb. 440, 422 N.W.2d 793 (1988).

D. The court has considered each of the factors prescribed by statute and identified by the Nebraska Supreme Court. These factors tend to overlap. Both parents have strong, generally healthy relationships with the child. Both parents are physically and mentally capable of providing care and support for the child. Both parents offer suitable housing and physical arrangements. Both parents can provide appropriate child care arrangements during employment time. The child is not of an age of comprehension to express any meaningful preference. Neither party adduced credible evidence of abuse. The child does not have any special needs, or difficulties in health, welfare, or social behavior. Both parents have demonstrated moral lapses and poor exercise of judgment. While the petitioner has particularly demonstrated morally-deficient behavior recently in at least one public setting, the evidence shows the absence of the child during such times. Prior to the most recent separation, the parties assumed traditional gender-associated roles, in that the petitioner provided primary child-care and the respondent supported the family by employment taking him away from home for frequent, extended periods. These choices, made by the parties themselves, resulted in the child developing a strong parental bond with the petitioner as primary caretaker and limiting the respondent's relationship to a supporting role. Changing custody would disrupt the only home setting the child has ever known. While the subject child has half-siblings from both petitioner and respondent, the evidence shows a strong sibling relationship with the

petitioner's other child, who resides in the family home, and a more tangential relationship with the respondent's other child, who primarily resides in the other parent's home. The petitioner does not receive any preference because of her gender, the respondent's gender, or the child's gender. While this court to a degree shares the respondent's concern regarding the potential for confusion of the child because of the petitioner's "boyfriend," the petitioner presented persuasive testimony that the boyfriend's presence has occurred in the absence of the child. This matter should be addressed by specific limitations on the petitioner's activities concerning the child. The petitioner's evidence persuades the court that the petitioner has not limited the respondent's visitation to any significant degree. However, it is also in the child's best interests that the respondent be utilized for parenting time in lieu of child-care during the petitioner's employment times wherever feasible.

14. CHILDREN:

A. There is no entry concerning any minor child affected by this action in the Nebraska Child Custody Jurisdiction Act Registry of the Court, and this Court has jurisdiction of the minor child of the parties to this action, as follows:

[M.D.S.], born on [deleted].

B. The petitioner is awarded the care, custody and control of the minor child of the parties, subject to reasonable rights of visitation and correspondence in the respondent, consisting at a minimum of the specific visitation rights as set forth in Appendix "C" attached and incorporated by reference, and further subject to the following limitations:

(1) The petitioner shall not allow any male person to remain overnight in the petitioner's home during times while the child is present, except where the circumstances would clearly and unquestionably show that no intimate sexual relationship exists between the petitioner and such male person.

(2) Whenever feasible, the petitioner shall provide the child to the respondent for parenting time during times of petitioner's employment-related absence from the home in which the child would otherwise be supervised by a family member or

other child-care provider. Such times shall be presumed to be feasible unless the petitioner shall have specifically communicated the time or times to the respondent and the respondent shall have specifically declined to exercise such parenting time. Failure of the respondent to communicate or failure to exercise such parenting time for extended periods of time shall constitute a material change of circumstances for modification of this limitation.

C. Appendix "A," Supplemental Order for Custody, etc., attached is incorporated into this Decree, and the parties are directed to comply therewith.

15. CHILD SUPPORT:

A. The respondent is ordered to pay child support to the State Disbursement Unit, for distribution to the petitioner at the rate of \$397.00 per month. Such payments shall commence on January 1, 2003, and continue in a like amount on the first day of each month thereafter until the child reaches majority under Nebraska law, becomes emancipated, becomes self-supporting, marries, or dies, or until the further order of the Court.

B. The amount of delinquent temporary support of \$1,716.06, plus interest, as shown on the records of the State Disbursement Unit (Exhibit 10), is preserved herein, and ordered paid by the respondent forthwith.

C. Delinquent child support installments shall bear simple interest at the judgment rate (see "JUDGMENT" paragraph below) from thirty (30) days after date of delinquency until paid.

D. Sufficient evidence has been produced to rebut the presumption that the Nebraska Child Support Guidelines should be applied as to the full amount of the respondent's earnings from his second job. The findings of the parties' incomes and calculations under the guidelines, and the deviation therefrom, used in determining the amount of support are set forth on Appendix "B" attached hereto, including Worksheets 1 and 5.

E. The respondent's gross income represents his current Christensen Farm job of 53 hours per week at \$8.40 per hour and 10 hours per week of his current

Pepsico job at \$7.50 per hour. The respondent's determination not to continue over-the-road trucking, as existed at the time of separation, which required regular absences from the area for extended time periods, is reasonable in light of his demonstrated intention to develop a more significant and time-consuming relationship with his child. He cannot obtain employment in Holt County providing an equivalent income stream. Even where he is not the custodial parent, the evidence demonstrates that the prior employment would substantially diminish his parenting time with the child and interfere with the father-child relationship. The choice to forgo the over-the-road trucking job to enhance his parent-child relationship is reasonable under the circumstances and is in the child's best interest. The respondent, however, is now employed in the area with two jobs. The court has considered all of the relevant considerations in determining how much of the second job income to include. *Dueling v. Dueling*, 257 Neb. 862, 601 N.W.2d 516 (1999). The \$200 amount for petitioner at Line 3 of Appendix "B" represents rental income on the other mobile home.

16. WITHHOLDING & ENFORCEMENT (MANDATORY):

A. The respondent's income shall be subject to income withholding, which shall be implemented pursuant to the Income Withholding for Child Support Act.

B. In the event that such party fails to pay any child, medical, or spousal support payments, as such failure is certified each month by the State Disbursement Unit, in cases where court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, such party may be required to appear before this Court on a date to be determined by the Court and show cause why such payment was not made. In the event such party fails to pay and appear as so ordered, a warrant shall be issued for such party's arrest.

C. The parties' social security numbers are set forth on Appendix "B" attached hereto and incorporated by reference.

17. INCOME TAX EXEMPTION: The respondent, if such party pays child support as ordered herein, shall be entitled to claim the minor child for dependency exemption purposes for federal and state income taxes. The petitioner is ordered to sign

a written relinquishment of the petitioner's claim to the dependency exemption separately for each child for each year including and following the date of the decree until the obligation of support for such child terminates. The petitioner is ordered to deliver such relinquishment to the respondent for the next preceding calendar year on or before January 31 of each year, but only if all child support payments due are paid as of such date. The respondent is ordered not to claim any dependency exemption at any time when such party has not paid all child support payments which have become due. The Court retains jurisdiction to enter such orders as may be necessary, including contempt proceedings or modification of support, in the event such party claims a dependency exemption at a time when such party has not paid all child support payments which have become due.

18. HEALTH INSURANCE:

A. There is health insurance for the minor child available through the respondent's employment by payment of part of the cost of such coverage. Within 30 days of the entry of this decree, the respondent shall file an affidavit, supported by oath or affirmation, that the respondent has obtained insurance coverage for such minor child through the insurance program available through employment. Thereafter, the respondent shall maintain such health insurance coverage on the minor child until the obligation of support terminates as above set forth, so long as such coverage is available through employment even where such program requires the respondent to pay a portion of the cost of such coverage.

B. Any reasonable and necessary medical expenses incurred for the minor child for whom the obligation of support has not terminated and which are not reimbursed by insurance, in excess of \$1,200.00 per family unit ([A] and [M] comprise the children in the family unit of petitioner) per year, shall be paid as follows:

(1) When the full extent of insurance coverage required by paragraph A is actually provided, the amount of any such expenses not reimbursed by insurance because such expenses are not covered or the amount representing any co-insurance requirement shall be paid 32% by the petitioner and 68% by the respondent.

(2) If the respondent fails to maintain the full extent of the insurance coverage required by paragraph A, the amount of any such expenses not reimbursed by insurance shall be paid by the respondent.

C. The health insurance policy information necessary to comply with the reporting requirement hereinafter set forth shall include, at a minimum, the following: (1) insurance company name and address; (2) policy number (for group policy, both group number and individual identifying number); (3) policy holder name (for group policy, both group name and individual name); (4) policy holder's social security number; and, (5) name, address, and telephone number of any person or entity (such as an employer) with which claims are to be filed or reported.

D. If the custodial parent files a written request with the Clerk, the party required to provide insurance shall file with the Court, at least annually, a certificate of the insurance company documenting that the required health insurance is currently in effect.

E. The party required to provide insurance shall fully cooperate with any health care provider to facilitate availability of prompt medical care, attention, and treatment to any minor child of the parties.

19. **REPORTS:** Each party shall be required to furnish the Clerk of the District Court of Holt County, Nebraska, in writing, with such party's address (including specific street address or other physical location, in addition to mailing address), telephone number, and social security number, the name and address of such party's employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information that the Court shall deem relevant until any judgment for alimony, child support, property settlement, attorneys fees, and/or costs, herein made are paid in full. Each party shall also be required to advise the Clerk of any changes in such information between the time of entry of this Decree and payment of the judgment in full, within ten (10) days after the effective date of such change. Failure to comply with the provisions of this section shall be punishable by contempt.

20. **DOCUMENTATION:** Each party is ordered to execute and deliver to the other party such documents as will be necessary to transfer all of the interest of the party not receiving the property to the party who shall receive the particular property under this Decree. In the event that any party fails to execute and deliver such documents within thirty (30) days of this Decree, this Decree shall have the effect of a conveyance and/or release under NEB. REV. STAT. § 25-1304, as amended, with the same effect as though the appropriate documents of conveyance or release had been executed and delivered in conformity with this Decree.

21. **JUDGMENT:**

A. Judgment is hereby entered against respondent and in favor of petitioner for child support, property settlement, attorneys' fees, and costs as above set forth.

B. The judgment rate applicable as of the date of entry of this decree is 3.507% per annum.

IT IS THEREFORE ORDERED that the parties to this action shall fully comply with the above findings and orders.

Signed in chambers at Ainsworth, Nebraska, on December 11, 2002.
DEEMED ENTERED as of date of filing by court clerk.

If checked, the Court Clerk shall:

- ☒ Mail copy of decree to all counsel of record and to any pro se parties.
Done on _____, 20____ by ____.
- ☒ Enter judgment on the judgment record.
Done on _____, 20____ by ____.
- ☒ Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20____ by ____.
- ☒ Note the decision on the trial docket as: [date of filing] Signed "Decree of Dissolution of Marriage" entered; judgment entered accordingly.
Done on _____, 20____ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge